201; *Liew Wah Ming v. PP* [1963] MLJ 82 per Hill JA.; *Mohamed Ali v. PP* [1962] MLJ 230, at p. 231; and *Karthiyayani & Anor. v. Lee Leong Sin & Anor.* [1975] 1 MLJ 119, at p. 120). The learned President had ruled that PW4 is a truthful witness, and, in fact it was upon his evidence that the other two accused were convicted of solicitation. He had also ruled that there was corroboration. Given those conclusions of the learned President, it would require very solid grounds to hold that the defence had cast a reasonable doubt on the prosecution case and none of the grounds mentioned by the learned President, which I had just set out, could create any doubt in the case of the prosecution. See *PP v. Lim Kuan Hock* [1967] 2 MLJ 114. On the overwhelming evidence, the respondent ought to have been convicted. I therefore set aside the order of discharge and acquittal and instead convict the respondent of the offence of corrupt solicitation on 4 June 1984 of RM150 from one Palurui bin Hassan under s. 3(a)(i) of the Prevention of Corruption Act 1961. I will hear the respondent before I sentence him.

TAN SEE HOCK

v.

DEVELOPMENT & COMMERCIAL BANK BHD. & ANOR.

HIGH COURT, JOHOR BAHRU
DATO' JAMES FOONG J.
[ORIGINATING SUMMONS NO. 31-362 OF 1987]
4 JULY 1993

LAND LAW: Reversion of land to State Authority - National Land Code 1965, ss. 199(1), 131 - Effect - Whether reversion extinguished all prior titles and interest over land - Previous chargee pleaded indefeasibility of interest despite reversion - s. 340 - Whether plea maintainable.

LAND LAW: Caveats - Removal - s. 326 National Land Code 1965 - Registrar of Titles issued notice to remove plaintiff's caveats - Notice based on application by defendant - Defendant's registered interest in land already extinguished - Whether notice of Registrar void and ultra vires.

WORDS AND PHRASES: "Interest" - National Land Code, 1965 s. 326.

The plaintiff entered into a joint venture agreement with a housing developer to develop his land into a housing estate. Pursuant to the agreement the plaintiff transfered the said land to the developer as trustee who in turn had it charged to the defendant by way of a first legal charge for financial facility.

Application for subdivision of the said land was approved by the authority and following the adopted procedure in the State of Johor the land was surrendered to the State Authority under s. 195 of the Code for re-alieanation and subsequent issuance of individual sub-divided titles. The authority then cancelled the original document of title of the land (of which the plaintiff was registered proprietor) and in its stead issued 71 sub-divided documents of titles with the name of the developer as the registered proprietor. All the titles were re-issued free from any incumbrances and hence without the first legal charge of the defendant registered thereon.

The intended housing project failed to materialise with the result that both the plaintiff and the defendant lodged their respective caveats over the said land. The defendant claimed indefeasibility of interest under s. 340 of the Code and applied to the Registrar of title for removal of the

plaintiff's caveat. On being issued with the statutory notice of the Registrar the plaintiff applied to the Court for extension of his caveat.

Held:

[1] The procedure adopted by Johor state for sub-division of any land is by way of surrender and re-alienation under s. 195 NLC. Upon such surrender, the land reverts back and vests in the State Authority under s. 199 NLC with the result that the land has the effect of being forfeited under s. 131.The effect of s. 131 is that it extinguished the interest of the first defendant over the land.

[2] The interest of the first defendant can only exist if there are first legal charges registered over the 71 sub-divided titles. As there are none, the first defendant cannot seek protection under s. 340 NLC.

[3] The word "interest" in s. 326 of the National Land Code must be in reference to a registered interest which would include a registered charge. Therefore s. 326(1) NLC can only be utilised by a registered owner or a person with a registered interest which would include a registered chargee.

[4] The first defendant has no interest in the land and has no legal right to proceed by way of s. 326 NLC. By doing so, it had rendered the acts of the Registrar including the issuance of Form 19C to the plaintiff ultra vires. When such acts are ultra vires, Form 19C has no legal effect on the plaintiff and the caveat should therefore remain where it is.

[Application of plaintiff granted].

Case referred to:

Macon Engineers Sdn. Bhd. v. Goh Hooi Yin [1976] 2 MLJ 53 ***(refd)***

Legislation referred to:

National Land Code 1965, ss. 131(a), 195, 199, 326(1), 327, 328, 340(1), (2), Form 19C

For the plaintiff - Ng Chew; M/s. Leng & Co.
For the defendants - N. Chandran; M/s. Adnan Sundra & Low

JUDGMENT

James Foong J:

Enclosure 1 is an application by the plaintiff to extend the private caveats lodged by the plaintiff on 71 sub-divided properties held under HS(D) No. 134280-134281, 134363-134397 and 134424-134458 for lot no. 19106-10107, 19189-19223 and 19250-19284 respectively all in the Mukim of Sedenak, Johor (hereinafter I shall refer to as the said land).

This extension was applied for, for reason that the plaintiff had received a Form 19C from the Registrar of Titles giving notice of the Registrar's intention to remove the plaintiff's caveats under s. 326 of the National Land Code (NLC) unless, extended by an order of the Court. Form 19C was issued by the Registrar in pursuance to an application to the Registrar for such removal by the 1st defendant.

On 11 April 1987, Enclosure 1 was heard by Justice Dato' Mohd. Yusoff (as he then was). This Court is informed that due to certain circumstances whereby full argument could not be presented, a temporary extension of the caveats was granted "until further argument before this Court on a date to be fixed". This "further argument" was heard before me on 28 June 1993 of which I now give my decision.

The facts of this case are these. The plaintiff was a registered proprietor of the said land which was before sub-division held under document of title CT. 17031 for lot no. 1046, Mukim Sedenak, Johor (for ease of reference I shall refer to this document of title as CT. 17031). Together with 4 other landowners, the plaintiff entered into a joint venture agreement with one Bantar Sdn. Bhd. (Again, for ease of reference I shall refer the joint venture agreement as "JVA" and Bantar Sdn. Bhd. as "Bantar").

Under the terms of JVA, the plaintiff agreed to transfer the said land to Bantar as trustee for the purpose of sub-division and for Bantar to develop the said land into a housing scheme whereby the plaintiff will get a certain percentage of the houses built thereon with separate individual sub-divided documents of title to come with it. There is also a provision in the JVA that Bantar can "utilise his share of the said land to raise working capital for the development of the said housing project before the approval of the sub-division of the said land from the relevant authorities".

The plaintiff transferred the said land to Bantar and Bantar duly charged the same by way of a first legal charge to the 1st defendant for financial facilities.

Application for sub-division of the said land was approved and, following the adopted procedure in Johor, the said land was surrendered to the authorities for re-alienation and subsequent issuance of individual sub-divided titles. This was consented to by the 1st defendant on condition that when individual sub-divided documents of title were issued, the same will be collected by the 1st defendant's solicitors. Consequent to this, the relevant authorities cancelled CT. 17031 and issued 71 sub-divided individual documents of title with the name of Bantar as registered proprietor, without any encumbrances such as that of the first legal charge of the 1st defendant thereon.

Just before the 1st defendant's solicitors collected these 71 sub-divided documents of title, the plaintiff lodged caveats on the said land. When the 71 sub-divided documents of title were collected the 1st defendant also lodged caveats of their own on the said land.

This Court is informed by Counsel that the housing scheme on the said land did not materialise as stipulated by Bantar and Bantar are unable to repay the loans granted by the 1st defendant.

The plaintiff's main contention is that the caveats should remain as they are, since the plaintiff has established an interest in the said land and that there is a serious question to be tried as regards to the ownership of the said land. Further, the plaintiff asserts that Form 19C issued by the Registrar of Titles is invalid for reason that it is *ultra vires.*

The 1st defendant's argument centred on indefeasibility of the 1st defendant's interest as a chargee under s. 340 of the NLC. As there are no reasons that the 1st defendant's interest is defeasible by any reason of any circumstances as specified in sub-section (2) of s. 340 NLC, the caveats should be removed.

The plaintiff's counsel, Mr. Ng intelligibly argued that s. 340 of the NLC does not apply. This is for reason that when the individual sub-divided documents of title were issued, they were free from encumbrances, without the first legal charge of the 1st defendant registered thereon.

As I have stated earlier, the procedure adopted by Johor state for sub-division of any land is by way of surrender and re-alienation of the land under s. 195 NLC. Upon such surrender, the land reverts back and vest in the State Authority as State land under s. 199 NLC. Only after this process is completed the land is once again alienated by the State to the original proprietor in sub-divided form. When this happens (the surrender & realienation) the said land has the effect of being forfeited under s. 131 NLC.

For clarity I reproduce s. 199 of the NLC:

> 199.(1) Upon the making of any memorial pursuant to sub-section (4) of s. 198, the land to which it relates shall revert to and vest in the State Authority as State land; and the provisions of s. 131 shall apply as if the land had reverted pursuant to a forfeiture.

When the land is forfeited by the State, the land is "freed and discharged from all titles and interest subsisting or capable of arising immediately before the forfeiture took effect;" This is so provided under s. 131(a) NLC.

Again for the sake of clarity, I reproduce s. 131(a) of the NLC:

> 131. Upon the taking effect in relation to any land of any forfeiture under this Act -
>
> (a) the land shall revert to, and vest in, the State Authority as State land, freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect;

This therefore extinguish the "interest" of the 1st defendant which had a first legal charge over CT. 17031. Subsequently, when the said land was alienated by the State to Bantar with individual sub-divided documents of title, these titles were free from encumbrances such as any first legal charges. The interest of the 1st defendant can only exist if there are first legal charges registered over them. However, as there are none, the 1st defendant cannot seek protection under section 340 NLC.

Mr. Chandran, Counsel for the 1st defendant raised the theory of the 1st defendant possessing an equitable charge over the said land thereby its interest thereon is indefeasible under s. 340 NLC. I find this theory contrary to the very objective of the Torren System of land registration. Section 340(1) NLC expressly confers indefeasible title or interest on "any person or body for the time being registered as proprietor of any land, or in whose name any lease,

charge or easement is for the time being registered". It never mention such a privilege to be conferred on a chargee not registered neither does it recognise an equitable charge to benefit it from being indefeasible. This Court is not prepared to read into an Act of Parliament words which are not there. Section 340(1) NLC is clear and unambiguous and as the 1st defendant is not the registered chargee, they cannot avail themselves of the indefeasibility of their interest in the said land.

I shall now turn to Form 19C which was issued by the Registrar in pursuance to a request by the 1st defendant. Section 326(1) NLC reads as follows:

> s. 326(1) Any person or body whose land or interest is bound by a private caveat may at any time apply to the Registrar for its removal pursuant to this section, and the Registrar shall -
>
> (a) serve upon the person or body at whose instance the caveat was entered a notice of intended removal in Form 19C; and
>
> (b) subject to sub-section (2), remove the caveat at the expiry of the period of one month specified in that notice.

The word "interest" in this section must be in reference to a registered interest. A registered interest would include a registered charge. Therefore s. 326(1) NLC can only be utilised by a registered owner (see the judgment of Ali Hassan FJ in *Macon Engineers Sdn. Bhd. v. Goh Hooi Yin* [1976] 2 MLJ 53 or a person with a registered interest which would include a registered chargee. Any other category of persons aggrieved should seek relief by way of s. 327 NLC through applications to the Court.

In this case, the 1st defendant is not a registered chargee and has no legal right to proceed by way of s. 326 NLC. By doing so, it would render the acts of the Registrar including the issuance of Form 19C *ultra vires*. When such acts are *ultra vires*, Form 19C has no legal effect on the plaintiff and the caveat should remain where it is.

In the course of the 1st defendant's Counsel's argument, it was pointed out that up to date, the plaintiff has not taken any action to pursue his claim against anybody (except for this application) and, the caveats on the said land should not be allowed to maintain forever. In reply, the plaintiff similarly accused the 1st defendant for not taking any steps to assert and to determine their rights (if any). To my mind, eventually the parties will come to their senses and possibly an issue of competing equities will be litigated. However, at this stage, this Court should not be minded of issues not before it but will only be confined to what is at hand and to apply the correct principles thereto. It is not for this Court to set directions to the plaintiff at this stage for statute, the NLC in this case, has by itself already determined the life span of a caveat. Until the life span of the caveat expires or is set aside, this Court is not empowered to give any directions unless proper application is made thereto.

For reasons aforesaid, I order that the caveats lodged by the plaintiff do remain on the said land until its life span entire, under s. 328 NLC (unless extended) or, until any other application to have it set aside before its expiry. Costs of this application to the plaintiff.